

ESTATE OF HOWARD GOOD ELK OR PACER

IBIA 80-39

Decided July 20, 1981

Appeal from order by Administrative Law Judge Frederick W. Lambrecht denying petition to reopen estate.

Affirmed.

1. Indian Probate: Reopening: Generally

Where appellant, brother of decedent, petitioned to reopen in conjunction with petition of another interested party and conditioned his appeal from the order denying reopening upon the same grounds as the other party, his appeal must succeed or fail for the same reasons as the appeal of the principal appellant. Since the co-appellant was unable to establish that the offered proof which was the basis of her petition would change the result of the decision below, reopening is not justified under existing Departmental regulations.

APPEARANCES: Richard B. Leonard, Esq., for appellant Matthew Good Elk or Pacer; David H. Getches, Esq., for appellee Wanda G. Black Horse.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On March 7, 1978, a determination of heirship issued in the estate of Howard Good Elk finding appellee Wanda G. Black Horse to be decedent's natural daughter. On October 5, 1979, a petition for rehearing filed by appellant Matthew Good Elk, brother of decedent, was denied. Appellant failed to appeal the order denying rehearing, and finality attached to the probate proceedings before the Administrative Law Judge (43 CFR 4.241(b)). On November 19, 1979, Ruby Pacer, a niece of the decedent, filed a petition to reopen the estate to show by evidence claimed to be newly discovered that decedent's former

wife, appellee's mother, had made inconsistent statements concerning appellee's paternity. Appellant Matthew Good Elk joined in Ruby Pacer's appeal from the order denying her petition to reopen. Appellant Matthew Good Elk's appeal is expressly made to depend entirely upon the success of his co-appellant's case. No independent basis for appeal is alleged by him.

This Board in Estate of Howard Good Elk or Pacer, 9 IBIA 38 (1981), holds that the appeal of Ruby Pacer has failed to establish a basis for reopening this probate. Accordingly, since her appeal is rejected based upon the patent insufficiency of her offer of proof to affect the outcome of the proceedings, appellant Matthew Good Elk's appeal fails for the same reason. The order denying reopening must be affirmed.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order below denying reopening is affirmed.

This decision is final for the Department.

Franklin D. Arness
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge